



## RESOLUTION

### *CITY OF NASHUA*

*In the Year Two Thousand and Four*

**RESOLVED** by the Board of Aldermen of the City of Nashua to approve the Agreement between the City of Nashua and the Nashua Pride Professional Baseball, LLC, the term of said Agreement terminating at the conclusion of the 2011 Championship Season.

## **AMENDMENT TO CONCESSION AGREEMENT**

NOW COME the parties, the City of Nashua, a New Hampshire municipal corporation located at 229 Main Street, Nashua, Hillsborough County, New Hampshire, its successors and assigns (hereinafter “City”) and Nashua Pride Professional Baseball, LLC, its successors and assigns, with an address of 67 Amherst Street, Nashua, New Hampshire (hereinafter “Franchisor”), and Amend the Concession Agreement (hereinafter Agreement) entered between the parties on or about May 2001 as follows:

### **1. I (D) FRANCHISOR PAYMENTS**

The following shall amend existing payment terms in the Agreement as follows:

#### **A. 2004 Long Championship Season**

Franchisor will pay City the sum of:

1) \$75,000.00 payable in five (5) equal installments of \$15,000.00 to be paid on or before June 15<sup>th</sup>, July 15<sup>th</sup>, August 15<sup>th</sup>, September 15<sup>th</sup> and October 15, 2004; plus

2) 80% of Franchisor’s net profits <sup>1</sup> up to an additional \$125,000.00.

#### **B. 2005 and 2006 Short Championship Season**

The following shall apply provided that, beginning with the 2005 Championship Season, the franchisor operates a short-season schedule. In the event a long-season schedule is operating, payments shall be as in Section A, above.

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<sup>1</sup> Net profits are defined in this Amendment as revenue received by Franchisor from its baseball operations at Holman Stadium including related clinics, shows and/or exhibitions held in Nashua, less Franchisor’s cost of operations excluding depreciation and any W-2 salary or benefits paid to any person or entity with an ownership interest in Nashua Pride Professional Baseball, LLC.

1) \$50,000.00 payable in five (5) equal installments of \$10,000.00 to be paid on or before June 15, July 15<sup>th</sup>, August 15<sup>th</sup>, September 15<sup>th</sup> and October 15<sup>th</sup>, 2005, 2006 and any subsequent season; plus

2) 80% of Franchisor's net profits up to an additional \$70,000.00.

C. Franchisor will provide financial information to the City at the end of the Third Quarter (September 30) and the Fourth Quarter (December 31) as well as provide appropriate tax return information upon its completion for each season covered by this Agreement for the purposes of determining the net profit as outlined in this Amendment. While the City will be provided access to this information as indicated, said information and their contents shall not be public documents or otherwise disclosed.

D. Concession Agreement Payments

A. In addition to the amounts to be paid by Franchisor to the City as indicated herein, Franchisor will pay City the sum of \$140,000.00 as follows:

1) \$70,000.00 on or before August 15, 2005;

2) \$70,000.00 on or before August 15, 2006.

B. Prepayment and/or payment in full of the \$140,000.00 as indicated herein, shall reduce the percentage of Franchisor's net profit payments to the City from 80% to 33% as outlined in ¶¶ 1 (A) (2) and 1 (B) (2) herein.

2. **II (C) (D) TERM**

The turnstile attendance figures as outlined in these paragraphs of the Agreement shall be amended as follows:

<u>Year/Championship Season Conclusion</u>	<u>Average Turnstile Per Game Attendance Requirements</u>
2006	2,700
2007	2,800
2008	2,900
2009	3,000
2010	3,100
2011	3,200

3. **IX SPONSORSHIPS**

The following language shall be added to the existing provisions of the Agreement:

A. It is understood and agreed that Franchisor has the exclusive right to market and obtain a Field Sponsorship agreement with a sponsor and may currently do so. Assuming that Franchisor obtains such a sponsor, the City would receive payment as follows:

1) 100% of the net revenues from this sponsorship until any amounts due as indicated in ¶ 1 (D), are paid in full. The net revenues for this sponsorship would be less expenses related to the creation of any signage or other promotional information/items or the like related to the sponsorship.

2) Upon payment of any amounts due in regard to Concession Agreement Payments as outlined in ¶ 1 (D) above, the net revenues from such a sponsorship would be utilized in the calculation of the net profit/percentage payments to be made to the City as indicated herein.

B. In regard to any such Field Sponsorship:

1) Franchisor acknowledges and agrees that any Field Sponsorship obtained as indicated herein shall be in a manner which is consistent with the historical nature and family orientation of the Premises and the operation of professional minor league baseball.

2) Franchisor shall consult with City in regard to any anticipated Field Sponsorship at the Premises to obtain the City's input in regard to the same to include the identity and terms of said anticipated Field Sponsorship.

3) In no event shall Franchisor enter into an agreement relating to Field Sponsorship which is for a duration in excess of the term of this Agreement and any such Field Sponsorship shall be only for the term that Franchisor or its assignee plays professional baseball at the Premises.

4) Any such Field Sponsorship shall not require any new or additional affirmative obligations of City.

4. **XII Assignment**

The following shall be added to the existing provisions of the Agreement:

Notwithstanding the rights of Franchisor in regard to Assignment contained herein, any amounts then rightfully due City by Franchisor pursuant to the parties' Agreement, and any Amendments thereto, shall be paid in full to City within 30 days of any such assignment.

5. **XIX Franchisor Equipment**

The following language shall be added to the existing provisions of the Agreement: Franchisor agrees to provide a security interest to City in regard to the items

indicated herein and further agrees that should the City terminate this Agreement for failure of Franchisor to pay amounts rightfully due as indicated, Franchisor agrees that it shall not remove any such equipment from the Premises and that ownership interest in regard to the same shall become vested in the City.

6. **XXIV     Default**

The following shall be added to the existing provisions of the Agreement:

Notwithstanding the terms of default as indicated herein, should Franchisor's default be related to the failure of Franchisor to make any payments rightfully due to the City, or pay the same into an escrow account, within 10 days of being due, City shall have the right to terminate this Agreement and require Franchisor to vacate the Premises within 10 days of its receipt of written notice from the City requesting such. Further, interest on any payments not timely made as indicated herein shall be applicable at three percent (3%) per annum. In such event, the Agreement between the parties, and any Amendments thereto, shall be terminated and all rightfully accrued amounts then due City by Franchisor pursuant to the same shall become due and payable and City shall be able to forthwith commence negotiations with any other entity in regard to the use and occupancy of the Premises. Further, in such event, City shall not be required to participate in mediation as outlined in Paragraph XXV of the parties' Agreement, prior to exercising its rights as indicated herein.

7. **XXVI     NEW HAMPSHIRE LAW APPLIES**

The following shall replace the existing provisions of the Agreement:

The parties agree that this Agreement shall be governed by applicable New Hampshire law and any action in regard to the rights of the parties in regard to the

Agreement, any Amendment(s) or in any way referable thereto, shall be brought in any court of competent jurisdiction within the State of New Hampshire.

8. **XXVIII PRIVATE BOX OFF-SEASON USE/WINTERIZATION**

The following shall be added as Paragraph XXVIII of the Agreement:

In the event Franchisor desires to utilize or keep open certain private box(es) on a year-round basis (i.e. throughout the off-season), Franchisor shall notify City on or before November 1 of year of this Agreement which private box(es) it desires to remain open. Those private box(es) not designated to be utilized on a year-round basis by Franchisor will be winterized by the City at the same time as those other portions of the Premises not utilized by Franchisor for its off-season business operations. Should Franchisor designate any private box(es) to remain open as indicated herein, the parties shall split evenly the cost of electrical utilities related to any such private box(es) so designated during said off-season period.

City of Nashua

\_\_\_\_\_  
Date

By:\_\_\_\_\_  
Bernard Streeter, Mayor  
DULY AUTHORIZED

Nashua Pride Professional Baseball, LLC

\_\_\_\_\_  
Date

By:\_\_\_\_\_  
DULY AUTHORIZED